



Serial No. 09/574,987; Navy Case No. 82408

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Petition

on \_\_\_\_\_, 2001  
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\_\_\_\_\_  
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### IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:  
CAROL A. BECKER  
Serial No. 09/574,987  
Filed: 12 May 2000

Examiner: Tran, T.  
Art Unit: 1741

which is a division of parent:  
Serial No. 09/137,008  
Filed: 20 August 1998

FOR: VISIBLE LIGHT pH CHANGE FOR ACTIVATING POLYMERS AND OTHER pH  
DEPENDENT REACTANTS

### PETITION TO THE COMMISSIONER UNDER 37 CFR 1.144

Honorable Commissioner of Patents and Trademarks  
Washington, DC 20231

Sir:

In response to the Office Action of 8 May 2001, the following petition is submitted.

#### Statement of Facts:

On 17 April 2000, Petitioner requested that the Examiner reconsider a requirement for restriction. As required by 37 CFR 1.143, Applicant made a provisional election of claims for

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for prosecution in this request for reconsideration. All other claims were provisionally canceled.

In an Office Action of 8 May 2001, the request for reconsideration was refused. The basis for this refusal, is, as stated by the Examiner:

"Claims 4-6 and 23-24 have been canceled; therefore, Applicant's arguments with respect to the Restriction Requirement are moot."

Applicant considers all prerequisite acts for this petition to have been fulfilled. On 17 April 2001 Applicant made a proper request for reconsideration. This request resulted in a repeated action by the Examiner dated 8 May 2001.

The details of this restriction requirement will now be presented.

#### **Reiteration of the Patent Office Restriction Requirement**

The Examiner asserts that restriction to one of the following inventions is required by 35 U.S.C. 121:

- I. Claims 4-6, drawn to an apparatus, classified in class 422.
- II. Claims 7-14 and 27-33, drawn to an apparatus, classified in class 422, subclass 186.
- III. Claims 23 and 24, drawn to a method, classified in class 204, subclass 157.15.

Attached as an appendix to this petition is a copy of the claims in issue.

The Examiner has stated that the inventions are distinct, each from each other, in that the inventions of groups I, II, and III are unrelated and that these inventions have different functions.

Specifically, the Examiner indicates that:

Group I is an apparatus requiring a solution containing anthracene and not a polymer;  
Group II is an apparatus requiring a solution of anthracene and a polymer in the solution;

and

Group III is a method not requiring a solution of anthracene and/or a polymer disposed in the solution.

The Examiner states that it would be a burden to search for the specifics for each group

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when they are not required for each group.

In addition, the Examiner states that the inventions of Group II and of the combination of Groups I and II are related as process and apparatus for its practice.

The Examiner refers to MPEP 806.05(e) where it is described how inventions are distinct if it can be shown that either:

(1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used for another and materially different process.

Here, the Examiner asserts that the process as claimed can be practiced by another materially different apparatus, such as one not requiring a solution containing anthracene and/or a polymer in the solution.

The Examiner indicates that the inventions are distinct for these reasons and that because the search required for Groups I and II is not required for Group III, restriction is proper.

In addition, the Examiner states that because the inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction as indicated is proper.

#### **Points to be Reviewed**

I. Is the restriction requirement proper?

#### **Argument**

In response to the restriction requirement, Applicant traversed the requirement.

Applicant provisionally canceled claims 4-6 and 23-24 (Groups I and III) and provisionally elected the invention described by remaining claims 7-14 and 27-33 (Group II).

The Manual of Patent Examining Procedure (MPEP) section 803 states that:

"If the search and examination of an entire application can be made without **serious burden**, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions." (bold added)

Claim 7, the independent claim of the provisionally elected Group II claims, includes the following elements:

CLAIM 7

An apparatus comprising:

- a solution containing anthracene;
- a polymer disposed in said solution, said polymer having the characteristic of changing its volume in response to a change in pH; and
- a source of visible light for irradiating said solution with light of a wavelength and of an intensity to establish a pH change in said solution so that when said solution is irradiated with said visible light said polymer undergoes a change in volume.

Group I's provisionally non-elected independent claim 4 contains the following elements:

CLAIM 4

An apparatus comprising:

- a solution containing anthracene; and
  - a source of visible light
- in which said source of visible light is used to irradiate said solution at a wavelength and of an intensity to establish a pH change in said solution.

Group III's provisionally non-elected independent claim 23 contains the following:

CLAIM 23

A method comprising:

- forming a solution of a compound that exhibits a change in pH upon irradiation with visible light; and
- changing said pH in said solution by irradiating said compound with said visible light so that said compound is elevated from a ground state energy level to a higher singlet state energy level to a triplet state energy level.

Applicant asserts that, in order for the responsibilities of the patent application examination process to be fulfilled, a complete examination corresponding to the provisionally elected Claim 7 and its dependent claims must be made.

This examination compels an examination of **all** of the elements of provisionally **non-elected** independent claims 4 and 23 as well as the claims dependent thereon.

For this reason, Applicant asserts that no reasonable person could find a serious burden imposed upon the Examiner by searching and examining the entire application including all of

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the claims cited.

The Examiner has indicated that the inventions of Groups I, II and III are distinct from each other as they are unrelated. MPEP sections 806.04 and 808.01 are cited by the Examiner wherein it is asserted to be indicated that:

“Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects.”.

In the instant case, the Examiner asserts that the inventions have different functions. No assertion is made however that the inventions are “not disclosed as capable of use together”.

As indicated earlier, the MPEP points out that even if an application includes claims that are independent or distinct, the search and examination of the application must present a serious burden to the Examiner. As Applicant stated above, no such burden is apparent.

The Examiner indicates that the claim limitations are different from each other and are not required for each of the groups. At the onset, it is a requirement of U.S. patent law that claims differ from each other. Otherwise they are subject to being rejected on the basis of multiplicity or what technically means “redundancy of claiming the invention”.

The Examiner asserts that it will be a burden to search for the specifics for each group “when they are not even required for each Group”. This may very well be a burden, but Applicant asserts that this burden is well within the scope of the thorough and complete examination due Applicant.

Though it is a matter of degree, the MPEP requires that an Examiner show that a **serious burden** will be imposed should they fully search and examine the application. As previously

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stated, Applicant fails to see how such a "serious" burden will be created. Properly searching and examining the provisionally elected Group II claims **will require** a search of all of the elements of the remaining Group I and III claims.

To further illustrate distinctness, the Examiner categorizes the inventions of Group III and the combination of Groups I and II as process and apparatus for its practice. Here, the Examiner cites MPEP section 806.05(e), wherein the following is contained:

"The inventions can be shown to be distinct if it can be shown that ... (1) the process as claimed can be practiced by another materially different apparatus....".

For reasoning, the Examiner states that the process as claimed can be practiced by another materially different apparatus such as one **not** containing an anthracene solution or anthracene solution with a polymer disposed in it.

MPEP section 806.05(e) states that:

"The burden is upon the examiner to cite reasonable examples that recite material differences."

Applicant asserts that the Examiner has not set forth a reasonable example. Applicant considers the cited MPEP section to be one requiring the setting forth a positive example versus a negative, in other words, providing an example of a materially different apparatus that can be used to practice the claimed process. None was given.

The Examiner indicates that the inventions are distinct for the reasons given above and because the search required for the combination of Groups I and II is not required for Group III.

Assuming that this reasoning is correct, it implies that at least Groups I and II deserve single group standing.

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Finally, the Examiner indicates that "Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper."

While Applicant recognizes the above quote to be largely a "form" paragraph, its statement is drawn from conclusive reasoning. In describing related inventions, MPEP section 808.02 under the category of "separate status in the art" provides the following:

"Even though they are classified together each subject can be shown to have formed a separate subject for inventive effort when an explanation indicates a recognition of separate inventive effort by inventors. Separate status in the art may be shown by citing patents which are evidence of such separate status and also of a separate field of search."

Applicant asserts that this evidence has not been brought forward.

**Action Requested**

As described in the above argument, Applicant asserts that the requirement for restriction is improper. It is therefore respectfully requested that the Examiner be directed to withdraw this requirement.

Any inquiry concerning this case should be directed to Applicant's attorney, Mr. Peter Lipovsky at (619) 553-3824.

Respectfully submitted,

by



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Registration No. 32,580  
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19 July 2001  
Commanding Officer  
Attention: Peter A. Lipovsky  
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53510 Silvergate Ave Rm 103  
San Diego, CA 92152-5765  
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APPENDIX

What is claimed is:

1 4. An apparatus comprising:

2 a solution containing anthracene; and

3 a source of visible light

4 in which said source of visible light is used to irradiate said solution at a wavelength and of an  
5 intensity to establish a pH change in said solution.

1 5. The apparatus of claim 4 in which said anthracene is in its protonated form.

1 6. The apparatus of claim 5 in which said irradiation excites said anthracene to emit  
2 phosphorescence.

1 7. An apparatus comprising:

2 a solution containing anthracene;

3 a polymer disposed in said solution, said polymer having the characteristic of changing its  
4 volume in response to a change in pH; and

5 a source of visible light for irradiating said solution with light of a wavelength and of an  
6 intensity to establish a pH change in said solution so that when said solution is irradiated with  
7 said visible light said polymer undergoes a change in volume.

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1 8. The apparatus of claim 7 in which said polymer is a polyelectrolyte fiber.

1 9. The apparatus of claim 8 in which said polyelectrolyte fiber is polyacrylic acid-polyvinyl  
2 alcohol (PAA-PVA).

1 10. The apparatus of claim 9 in which said pH change in said solution is within plus or minus 1  
2 pH value of a null point pH value of said polyelectrolyte fiber.

1 11. The apparatus of claim 7 in which said polymer is a polymer gel.

1 12. The apparatus of claim 11 in which said polymer gel is an acrylamide gel.

1 13. The apparatus of claim 12 in which said pH change in said solution is within plus or minus  
2 1 pH value of a null point pH value of said polymer gel.

1 14. The apparatus of claim 7 in which said anthracene is in its protonated form.

1 23. A method comprising:

2 forming a solution of a compound that exhibits a change in pH upon irradiation with

3 visible light; and

4 changing said pH in said solution by irradiating said compound with said visible light so

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5 that said compound is elevated from a ground state energy level to a higher singlet state energy  
6 level to a triplet state energy level.

1 24. A method according to claim 23 in which said pH change exists for at least one millisecond.

1 27. The apparatus of claim 7 wherein said anthracene is in its protonated form.

1 28. The apparatus of claim 27 in which said polymer is a polyelectrolyte fiber.

1 29. The apparatus of claim 28 in which said polyelectrolyte fiber is polyacrylic acid-polyvinyl  
2 alcohol (PAA-PVA).

1 30. The apparatus of claim 29 in which said pH change in said solution is within plus or minus 1  
2 pH value of a null point pH value of said polyelectrolyte fiber.

1 31. The apparatus of claim 7 in which said polymer is a polymer gel.

1 32. The apparatus of claim 31 in which said polymer gel is an acrylamide gel.

1 33. The apparatus of claim 32 in which said pH change in said solution is within plus or minus  
2 1 pH value of a null point pH value of said polymer gel.



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<b>TRANSMITTAL FORM</b> <i>(to be used for all correspondence after initial filing)</i>	Application Number	09/574,987 ✓	
	Filing Date	12 May 2000 ✓	
	First Named Inventor	Carol A. Becker	
	Group Art Unit	1741	
	Examiner Name	T. Tran	
Total Number of Pages in This Submission	13	Attorney Docket Number	82408

ENCLOSURES (check all that apply)		
<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment / Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/ Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Assignment Papers (for an Application) <input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input checked="" type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____	<input type="checkbox"/> After Allowance Communication to Group <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input type="checkbox"/> Other Enclosure(s) (please identify below):
Remarks		

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Signature	<i>Peter A. Lipovsky</i>
Date	23 JUL 01

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## PETITION ROUTING SLIP

(Find the petition from the list and check the box in the heading above the petition)

### Complete if Known

Application Number	09/574,987
Filing Date	12 May 2000
First Named Inventor	Carol A. Becker
Group Art Unit	1741
Examiner Name	T. Tran
Attorney Docket Number	82408

### ☐ PETITIONS DECIDED BY PETITIONS OFFICE

- 301 Relating to Public Use Proceedings (37 CFR 1.292)  
302 To make application special - prospective manufacture (37 CFR 1.102, MPEP 708.02)  
303 To make special - infringement (37 CFR 1.102, MPEP 108.02)  
304 Relating to the Filing/issuance of Divisional Reissue (37 CFR 1.177)  
305 To waive or suspend rules (37 CFR 1.183)  
306 To expunge a paper from patent application or patent file (37 CFR 1.59)  
307 Withdrawal of Attorney (37 CFR 1.36)  
308 For access to application except re proceedings before Board (37 CFR 1.14, MPEP 103.104)  
309 Relating to Small Entity (37 CFR 1.28)  
310 Relating to reexamination (37 CFR 1.181-1.183)  
311 For correction of inventorship for applications - no filing date (37 CFR 1.48)  
312 For correction of inventorship re PCT applications (37 CFR 1.48)  
313 For filing application without one or more inventors (37 CFR 1.47)  
314 For filing PCT application without one or more inventors (37 CFR 1.47)  
315 For extension of time without fee in cases in Application Division (37 CFR 1.135(b))  
399 For matters before A/C for Patents - not specified  
408 Relating to a filing date under 35 USC 111a 37 CFR 1.53  
411 Filing date for application filed by Express Mail (37 CFR 1.10)  
412 Filing date for lost application  
501 To revive an abandoned application - unavoidable delay (37 CFR 1.137(a))  
502 To revive an abandoned application - unintentional abandonment (37 CFR 1.137(b))  
503 To waive/suspend rules (37 CFR 1.183)  
504 To invoke supervisory authority - re patent examining operations (37 CFR 1.181)  
505 To withdraw from issue after payment of issue fee (37 CFR 1.313(b)(1-4))  
506 To withdraw from issue after payment of issue fee (37 CFR 1.313(b)) or abandon application in favor of continuing application  
507 To enter priority papers after issue Fee payment (37 CFR 1.55(a))  
508 To defer issuance of patent (37 CFR 1.314)  
515 To invoke supervisory authority - re Office of Admin. (37 CFR 1.181)  
516 To waive/suspend rules re patent mailers in Office of Admin. (37 CFR 1.183)  
519 To decide matters before Deputy A/C for Patents under 37 CFR 1.182  
521 To review refusal to accept & record maintenance fee - application filed on or after 8/27/82 (37 CFR 1.377)  
523 To issue patent in the name of the Assignee (37 CFR 1.334(c))  
525 To withdraw a holding of abandonment (37 CFR 1.181)  
526 To order a Commissioner-initiated Reexamination proceeding (37 CFR 1.520)  
527 To convert Provisional Application  
528 To reinstate abandoned Provisional Application  
530 PCT petition-unavoidable  
531 PCT petition-unintentional  
532 To accept unavoidably delayed payment of maintenance fee (37 CFR 1.378 (b))  
533 To accept unintentionally delayed payment of maintenance fee (37 CFR 1.378 (c))  
534 Petitions related to reexamination proceedings  
599 For matters before the Deputy A/C for Patents - not specified

### ☒ PETITIONS DECIDED BY THE GROUP DIRECTOR

- 601 To make application special on ground of age or health (37 CFR 1.102, MPEP 708.02)  
602 To make special - continuity of earlier application (37 CFR 1.102, MPEP 708.02)  
603 To make special - environment quality program (37 CFR 1.102, MPEP 708.02)  
604 To make special - accelerated examination (37 CFR 1.102, MPEP 708.02)  
605 To make special - Energy Program (37 CFR 1.102, MPEP 708.02)  
606 To make special - Recombinant DNA (37 CFR 1.102, MPEP 708.02)  
607 To make special for reasons not provided for in codes 601-606 (37 CFR 1.102, MPEP 708.02)  
608 To reopen prosecution after Board decision (37 CFR 1.198)  
609 For review of final restriction requirement (37 CFR 1.144)  
610 Invoking Authority of Commissioner under 37 CFR 1.181 not specified in codes 601-606  
611 Relating to the prematurity of final rejection (37 CFR 1.181, MPEP 708.07(c))  
612 Relating to the refusal to enter an amendment (37 CFR 1.181 & 1.127, MPEP 714.19)  
613 To withdraw a holding of abandonment (37 CFR 1.137, MPEP 711.03)  
614 Relating to a requirement to cancel new matter from application (37 CFR 1.181, MPEP 608.04(c))  
615 Relating to formal sufficiency/propriety of affidavits (37 CFR 1.131, 1.132, 1.608, MPEP 715.07)  
616 To institute an interference (37 CFR 1.606)  
617 Relating to refusal to enter an amendment under 37 CFR 1.312  
618 For concurrent Ex parte and Inter parte proceedings (37 CFR 1.212)  
619 For return of original oath of patent application (MPEP 604.04(a))  
620 For extension of time (37 CFR 1.136(b))  
621 For interview after Notice of Allowance mailed (MPEP 713.10)  
622 Concerning appeal application before transfer of jurisdiction to Board (MPEP 1206)  
623 For second or subsequent suspension of action (37 CFR 1.103, MPEP 709)  
625 To reinstate Appeals dismissed in Group  
626 From denial of reexamination request (37 CFR 515(c))  
627 To enter an amendment after payment of Issue Fee (37 CFR 1.312(b))  
628 From refusal to issue a Certificate of Correction (37 CFR 1.181, MPEP 1480-1485)  
629 For withdrawal of attorney from application pending in group (37 CFR 1.36)  
630 For extension of time in a reexamination (37 CFR 1.550(c))  
631 To merge multiple reexamination proceedings (37 CFR 1.565(c), MPEP 2283)  
632 To effect a second conversion of inventorship (37 CFR 1.48, MPEP 201.03)  
633 Superconductivity  
634 To correct inventorship in a patent not in interference (37 CFR 1.324, MPEP 1481)  
635 To change inventorship in an application (37 CFR 1.48)  
636 To change inventorship in a patent (37 CFR 1.48)  
637 To withdraw from issue before payment of an issue fee (37 CFR 1.313(a))  
699 For matters before Group Director - not specified

### ☐ PETITIONS DECIDED BY BOARD OF PATENT APPEALS AND INTERFERENCES

- 701 To exercise supervisory authority re action by examiner/examiner-in-chief (37 CFR 1.644)  
702 To accept belatedly filed copies of interference settlement agreements (35 USC 712, 37 CFR 1.666(c))  
703 For withdrawal of attorney in proceeding under 37 CFR 1.201 - 1.288 (37 CFR 1.38)  
704 For access to a settlement agreement under 35 USC 135(c) (37 CFR 1.666(b))  
705 For access to an application in proceedings before the Board (37 CFR 1.14(a))  
706 From a refusal to issue a Certificate of Correction (37 CFR 1.322, 1.323)  
707 To correct errors in inventorship (37 CFR 1.324)  
708 For extension of time to file supplemental Reply Brief under 37 CFR 1.196(b) (37 CFR 1.136)  
709 To make an application before the Board special (37 CFR 1.102)  
710 For extension of time to file supplemental Reply Brief (37 CFR 1.136)  
711 To assign particular members to hearing or to request augmented panel (35 USC 71)  
712 To decide miscellaneous questions in proceedings under 37 CFR 1.601-1.688  
713 To accept priority papers in applications in interference (37 CFR 1.644)  
714 To reinstate an Appeal  
799 For matters before Chairman of Board - not specified  
801 To make an application before the Board special (37 CFR 1.102)  
802 To reinstate an Appeal  
803 To extend time/suspend proceedings (37 CFR 1.196, 1.197, 1.304)  
804 For extension of time to file supplemental Reply Brief (37 CFR 1.136)  
805 To accept late request for an Oral Hearing (37 CFR 1.136)  
899 For matters before the Clerk of the Board - not specified

### ☐ PETITIONS DECIDED BY SPECIAL LAWS (SECURITY AND GOVERNMENT INTEREST MATTERS)

- 901 Under 42 USC 2182  
902 Under 42 USC 2457  
903 Under 35 USC 184  
904 Under 35 USC 267  
905 To consider/review security or Government interest matters - not specified

### ☐ PETITIONS DECIDED BY THE SOLICITOR

- 951 Petitions for extension of time in court matters 35 USC 142, 145, 146  
952 Petitions relating to ex parte questions in cases before the Court of Appeals for the Federal Circuit  
953 Requests filed under the Freedom of Information Act  
959 Not specified

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